

### **REMARKS/ARGUMENTS**

In the Office Action dated August 9, 2007, Claims 1-25 are pending, of which Claims 1, 10, and 21 are independent. As indicated more fully below, all of the claims are rejected under § 102 or § 103 in light of USPN 4,391,068 ("Kosar"), USPN 6,681,530 ("Givens"), USPN 5,894,697 ("Hunter"); and USPN 5,675,939 ("Hickner"), taken independently or in various combinations. In addition, Claims 19 and 25 are rejected under § 112, paragraph 2.

#### **Rejection of Claims 19 and 25 under § 112, paragraph 2**

Dependent Claims 19 and 25 are rejected under § 112, paragraph 2 as being indefinite. In particular, the office Action states that the "discussions of 'trimming' in these claims are vague and indefinite. It is unclear whether the flashing members are to be physically trimmed or altered on-site, or if the flashing is manufactured in such a way that it meets the claim limitations without further alterations."

Claim 19 is amended above to remove the term therefrom, and Applicant submits that this resolves the Examiner's concern regarding Claim 19.

Claim 25 depends from Claim 19, which is directed to a method, and further recites "trimming the roof portion and at least one of the first and second flanges such that the flashing defines an edge corresponding to an edge of the roof and the wall." Thus, Claim 25 clearly recites that the roof portion and one or more of the flanges are trimmed. Claim 25 does not require that the trimming take place in any particular location, only that the trimming is performed. Accordingly, Applicant submits that Claim 25 is not indefinite under § 112, paragraph 2 and respectfully requests withdrawal of the rejection.

#### **Amended Claim 1 and dependent Claims 2-4, 6, 7, and 9**

Claims 1-4 are rejected under § 102(b) as being anticipated by Kosar. Claims 1, 7, and 8 are rejected under § 102(e) as being anticipated by Givens. Dependent Claims 5 and 6 are rejected under § 103(a) as being unpatentable over Kosar in view of Hunter, and dependent Claim 9 is rejected under § 103(a) as being unpatentable over Kosar in view of Givens.

Claim 1, which is directed to a kickout flashing for directing water along an interface defined between a roof and a wall, is amended above to incorporate the features of Claim 8 and additional features. Claim 8 was rejected under the sole basis of being anticipated by Givens. Applicant respectfully requests reconsideration in light of the following comments.

The kickout flashing of amended Claim 1 includes a flat, impervious roof portion and first and second flanges that extend perpendicularly from respective edges of the roof portion. The flanges are joined to each other to define an obtuse angle therebetween and define a continuous passage extending along an intersection of the roof portion and flanges for receiving water. Further, as previously set forth in Claim 8, the first and second flanges are substantially equal in size so that the flashing is substantially symmetric about a plane bisecting the obtuse angle between the flanges and the flashing is configured to be installed in either of two alternative orientations, i.e., with either of the flanges disposed against the wall and with the other flange configured to direct water flowing along the passage away from the wall.

Applicant first addresses the rejections based on Kosar. Kosar discloses a water deflector 10 having a flat, trapezoidal base 12, with a first upstanding lip 20 along the side edge 14 of the base and a second upstanding lip 22 extending along the front edge 16 of the base. Unlike the kickout flashing of Claim 1, the base 12 of Kosar is not flat and impervious as shown in the present application, i.e., "substantially free of cracks, holes, or other apertures through which water can flow," as defined in the present application. To the contrary, in addition to holes 26, the base defines raised tabs 24 formed by punching openings 44 in the base. Kosar specifically discloses the flow of mastic through the openings 44 and holes 26. *See* col. 3, lines 17-25.

Further, Kosar does not disclose first and second flanges that are substantially equal in size so that the flashing is symmetric about a plane bisecting the obtuse angle between the flanges and so that the flashing is configured to be installed in either of two alternative orientations, as recited in amended Claim 1. Kosar does not disclose that the first and second upstanding lips are equal in size or that the flashing is symmetric about a plane bisecting the angle between the two lips. To the contrary, Kosar specifically teaches that the flashing is not symmetric, but instead defines the openings 44 and holes 26 in only a portion of the base. The Office Action acknowledges that Kosar fails to teach this feature.

Applicant next addresses the rejections based on Givens. Applicant respectfully submits that Givens also fails to disclose each of the features of amended Claim 1. First, Claim 1 recites that the first and second flanges extend perpendicular to the roof portion. The Office Action asserts that panels 71 and 72 of the flashing 66 of Givens correspond to the first and second flanges of Claim 1 and panel 73 corresponds to the claimed roof portion of Claim 1; however, as illustrated in Figure 3 of Givens, the panels 71 and 72 are not perpendicular to the panel 73. (Indeed, in connection with Figure 7, which illustrates a modified form of a flashing 99 similar to the flashing 66 of Figure 3, Givens specifically describes that the “reason for tilting at least the panel 104 outwardly is to help shield the part of the building wall below it from receiving any water due to a storm.” Col. 9, lines 56-58.)

Further, Claim 1 as now amended also recites that the flanges are substantially equal in size such that the flashing is substantially symmetric and is configured to be installed in either of two alternative orientations. In connection with the rejection of dependent Claim 8, the Office Action refers to Figure 3 of Givens, which illustrates a roof stop flashing 66 located at the end of a gable return 67. Despite the differences in the installation of Givens, the Office Action relies on Givens because the different portions of Givens “are inherently capable of being disposed against a roof or a wall, therefore the structure disclosed by Givens meets all claimed limitations.” Office Action, page 5. Applicant disagrees because the flashing 66 of Givens is not symmetric about a plane bisecting the angle between the first and second panels 71, 72. Nor is the flashing 66 of Givens configured to be disposed in two alternative configurations with the first or second panels 71, 72 disposed against a wall and the third panel 73 disposed on the roof.

Thus, for each of these reasons, Applicant submits that Claim 1 as amended is not anticipated by either of Kosar or Givens. Claims 2-7 and 9 depend from Claim 1 and should therefore be allowable for the same reasons.

Applicant further submits that dependent Claim 5 includes an additional feature that distinguishes the cited references. Claim 5, was rejected solely on the basis of obvious over Kosar in view of Hunter. Kosar does not disclose a stop extending between first and second flanges. Indeed, the Office Action acknowledges that Kosar fails to teach this feature but, in connection with the rejection of dependent Claim 5, relies on Hunter, stating that it would have

been obvious “to modify the water deflector of Kosar with a stop as taught by Hunter in order to provide a channel for water to flow through that is protected by falling debris.” Office Action, page 8. Applicant disagrees and submit that it would not have been obvious to modify either Kosar or Givens (the only reference relied upon for the rejection of Claim 8, which has been incorporated into Claim 1) in this way. Indeed, none of Kosar, Givens, or Hunter provides this alleged motivation for combining the references. Hunter discloses a flashing with “an outwardly projecting elongated guide . . . formed in the elongated vertical portion of the siding at the predetermined level above the elongated horizontal portion of the flashing.” The guide can be used by an installer to properly cut and install siding the correct distance above the roof. *See* Abstract. This is a materially different application than the flashings of Kosar and Givens. Indeed, Kosar does not teach that the flashing is disposed near (or overlapped with) any siding. Rather, the device of Kosar is used along the edge of a roof “to prevent water from traveling over the downward sloping edges of a roof” as an alternative to installing gutters along the downward sloping edges. *See* col. 1, lines 26-32. Accordingly, it would not have been obvious to modify Kosar to include a guide for overlapped siding, since Kosar is not used with overlapped siding or in an application where siding could overlap the flashing. Givens also fails to disclose such a stop and, given the difference in the use of the roof stop flashing 66 of Givens at the end of a gable return 67, it would not have been obvious to provide such a stop between the first and second panels 71, 72.

Thus, Applicant submits that Claim 5 is patentable over the cited references for this additional reason.

**Independent Claim 10 and dependent Claims 11-20**

Claims 10-14 are rejected under § 103(a) as being unpatentable over Kosar in view of Hickner. Claims 15 and 16 are rejected under § 103(a) as being unpatentable over Kosar in view of Hickner and Hunter. Claims 10 and 17-19 are rejected under § 103(a) as being unpatentable over Givens in view of Hickner. Claim 20 is rejected as being obvious over Kosar in view of Hickner and Givens.

Applicant first addresses the rejection of Claim 10 as being unpatentable over Kosar in view of Hickner. Claim 10 is directed to a flashing assembly that includes a vertical wall and a roof extending perpendicular to the wall and defining an interface with the wall. A flashing, which is disposed at the interface, defines a continuous roof portion against the roof and first and second flanges extending perpendicular from the roof portion. The first flange is disposed against the wall, and the second flange defines an obtuse angle with the first flange so that the second flange is configured to direct water away from the wall. Further, the flashing is configured to be reversibly installed in an alternative assembly having opposite orientation such that the second flange is disposed against a wall of the alternative assembly and the first flange is configured to direct water flowing along the passage away from the wall of the alternative assembly.

In addition to the other distinctions noted above, Kosar does not disclose a flashing that can be reversibly installed so that either flange can be disposed against the wall. In fact, Kosar does not disclose that either flange is disposed against a wall. Moreover, Kosar specifically discloses that the base 12 defines openings 44 and holes 26, and it would not have been obvious to dispose the water deflector 10 of Kosar in another configuration in which the openings 44 and holes 26 would be exposed (i.e., not covered by shingle 34).

Hickner does not cure this deficiency of Kosar. Indeed, even to the extent that Hickner discloses a symmetry in the rainwater diverter, the symmetry is about plane that only allows the flanges 2, 3 to be disposed against the vertical wall, not the triangular surface 9. In particular, Hickner discloses that the "rainwater diverter flashing portion comprises two flanges that lie in planes which are essentially at right angles to each other, joined at a line with respect to which the flanges are viewed as being of bilateral symmetry." Col. 3, lines 1-5. This is substantially different than the flashing recited in Claim 10, in which an obtuse angle is defined between the two flanges, so that either flange can be disposed against a wall while the continuous roof portion is disposed against the perpendicular roof. For example, as set forth in dependent Claim 18, the flashing is substantially symmetric about a plane that bisects the obtuse angle between the two flanges.

Hunter, which is cited in combination with Kosar and Hickner in connection with Claims 15 and 16 fails to cure the above deficiencies of Kosar and Hickner.

Givens, even in fair combination with Hickner, also fails to disclose this feature of Claim 10. Indeed, since the panels 71 and 72 are not perpendicular to the panel 73 (asserted to correspond to the recited continuous roof portion), it is not clear how either of the panels 71, 72 could be disposed against a vertical wall while the panel 73 is disposed against a perpendicular roof portion. Moreover, neither Givens nor Hickner discloses installing the flashing in either of two configurations in which one of the panels 71, 72 is disposed against a vertical wall while panel 73 is disposed against a perpendicular roof.

Accordingly, for each of the above reasons, Applicant submits that the cited references, even when taken in fair combination, fail to disclose each of the features of Claim 10. Thus, Claim 10 should be allowable, along with each of the dependent claims.

Further, the dependent claims provide additional features not disclosed by the cited references. For example, the Office Action acknowledges that Kosar and Hickner fail to disclose a stop as recited in Claims 15 and 16 and instead relies on Hunter for this feature. However, as set explained above, it would not have been obvious to provide a guide for siding on the device of Kosar, which is not overlapped by siding.

#### **Independent Claim 21 and dependent Claims 22-25**

Claims 21-23 are rejected under § 103(a) as being unpatentable over Kosar in view of Hickner. Claim 24 is rejected under § 103(a) as being unpatentable over Kosar in view of Hickner and Hunter. Claim 25 is rejected under § 103(a) as being unpatentable over Givens in view of Hickner.

Independent Claim 21 is directed to a method of installing a kickout flashing for directing water along an interface defined between a vertical wall and a roof perpendicular to the wall. The method includes disposing a roof portion of the flashing against the roof, and selectively disposing one of a first and second flange of the flashing against the wall according to the orientation of the roof and the wall. The flanges define an obtuse angle therebetween so that the

other of the flanges is perpendicular to the roof portion and is configured to direct water flowing along the flanges away from the wall.

Kosar, even when taken in fair combination of Hickner, does not disclose the features of Claim 21. Indeed, Kosar does not teach that each of the lips **20, 22** can be disposed against a wall. In fact, as noted above, Kosar does not teach disposing either lip against a wall. Regardless of the teachings of Hickner, even if the device of Kosar were somehow modified to be used in a method similar to that of Claim 21, it would not have been obvious to selectively dispose either of the lips against the wall, since doing so would expose the openings **44** and holes **26** in the base from under the shingle **34**. Moreover, Hickner does not disclose this feature. To the contrary, Hickner discloses a device having flanges **2, 3** that can be disposed against the vertical wall or the roof. That is, if the flange **2** is disposed against the wall, the flange **3** is disposed against the roof, and if the flange **2** is disposed against the roof, the flange **3** is disposed against the wall. Hickner does not disclose selectively disposing either of two flanges against a vertical wall with a roof portion that is disposed against a perpendicular roof.

Accordingly, Applicant submits that Claim 21 is allowable over the cited references, as are each of the dependent Claims 22-25.

\* \* \* \*

### CONCLUSIONS

For the foregoing reasons, Applicant requests withdrawal of the rejections of pending Claims 1-7 and 9-25 and submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicant's undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

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therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit  
Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nich Gallo". The signature is fluid and cursive, with the first name "Nich" and last name "Gallo" clearly distinguishable.

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